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DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-816]

Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Court Decision not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On August 31, 2015, the United States Court of International Trade (the Court) sustained the Department of Commerce's (Department) Final Remand Redetermination pertaining to the 19th administrative review of corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea).¹

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,² as clarified by *Diamond Sawblades*,³ the Department is notifying the public that the final judgment in this case is not in harmony with the Department's final results of the 19th administrative review of CORE from Korea, and that it is amending the final results with respect to Dongbu Steel Co., Ltd. (Dongbu) and Union Steel Manufacturing Co., Ltd. (Union Steel).⁴ The period of review (POR) is August 1, 2011, through February 14, 2012.⁵

¹ See *Dongbu Steel Co., Ltd. v. United States*, CIT Consol. Court No. 14-00098, Slip Op. 15-99 (August 31, 2015); Final Results of Redetermination Pursuant to Court Remand, Court No. 14-00098, dated July 24, 2015 (Final Remand Redetermination); and *Dongbu Steel Co. v. United States*, 61 F. Supp. 3d 1377 (Ct. Int'l Trade 2015) (*Remand Order*).

² See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

³ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

⁴ See *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 17503 (March 28, 2014) (*Final Results*), and accompanying Issues and Decision Memorandum (I&D Memo).

DATES: EFFECTIVE DATE: September 10, 2015

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-3692.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 2012, the Department initiated an administrative review of the antidumping duty order on CORE from Korea for the period August 1, 2011, through July 31, 2012.⁶ On March 19, 2013, as a result of the International Trade Commission's determination in the third sunset review, the Department published a notice that the antidumping duty order on CORE from Korea would be revoked, but that it would complete any pending reviews of entries made prior to February 14, 2012, the effective date of revocation.⁷ For the *Preliminary Results*, published on September 9, 2013, the Department shortened the POR for the ongoing administrative review to reflect the effective date of revocation of the antidumping order.⁸ In its preliminary dumping calculations, the Department truncated the sales databases to conform to the shortened POR. However, in conducting the sales below cost and cost recovery tests to determine the pool of home market sales available for the calculation of normal value, the

⁵ The period of review ends on February 14, 2012 because the antidumping duty order on CORE from Korea was revoked effective on this date. See *Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders*, 78 FR 16832 (March 19, 2013) (*CORE Revocation*).

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 59168 (September 26, 2012).

⁷ See *Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders*, 78 FR 16832 (March 19, 2013); *Determinations: Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea*, 78 FR 15376 (March 11, 2013).

⁸ See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Administrative Review*, 78 FR 55057 (September 9, 2013), and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

Department used the cost of production database submitted by Dongbu covering the original August 1, 2011, through July 31, 2012, review period. For the *Final Results*, the Department continued to use Dongbu’s weighted-average cost data for the full-year POR in its antidumping calculations.⁹ The Department also used Dongbu’s weighted-average dumping margin as the rate for non-examined respondent Union Steel, because it was the only rate that was not zero, *de minimis*, or based on total facts available.¹⁰

Before the Court, Dongbu and Union Steel challenged the Department’s determination to use the 12-month cost of production data in both the cost recovery and sales below cost tests, arguing that the language of the cost recovery test in section 773(b)(2)(D) of the Tariff Act of 1930, as amended (the Act) requires that prices be measured for cost recovery against the weighted-average cost of production for the shortened POR, and that the Department accordingly should have requested new cost data for the revised POR and recalculated the weighted-average dumping margin.¹¹ Dongbu and Union Steel further argued that the Department’s use of costs outside the POR in the sales below cost test was unlawful because the statute requires that the cost of production “reasonably reflect the costs associated with the production and sale of the merchandise, during the period of review.”¹²

In its *Remand Order*, the Court held that the language of the statute “unambiguously prohibited the Department from using cost data for a period other than the POR to calculate the weighted average cost of production for purposes of the cost recovery test,” and that “{n}othing in the statutory framework contradicts the cost recovery test’s plain language regarding the

⁹ See *Final Results*, and accompanying I&D Memo at Comment 1.

¹⁰ See *Final Results*, 79 FR at 17504 & n.11.

¹¹ See *Remand Order*, 61 F. Supp. 3d at 1381.

¹² *Id.*, at 1388.

POR.”¹³ The Court rejected the Department’s remaining arguments regarding the cost recovery test provision.¹⁴

In addition, the Court agreed that the Department has discretion to include costs outside of the POR in conducting the sales below cost test, but found the Department’s explanation as to why it included post-review period cost data inadequate, and remanded to the Department to “explain its decision in this case that the costs incurred after the POR reasonably reflect the costs of the product under review.”¹⁵

After reopening the record to obtain cost of production data reflecting the revised POR from Dongbu, issuing a draft remand redetermination, and soliciting comments, the Department issued the Final Remand Redetermination on July 24, 2015. In the Final Remand Redetermination, the Department modified its dumping calculations by comparing Dongbu’s home market sales against cost data from the revised POR to determine whether such sales were made at prices that would provide for the recovery of costs.¹⁶ The Department relied on this same cost data in administering the sales below cost test for Dongbu.¹⁷ Finally, the Department assigned Dongbu’s revised dumping margin to Union Steel.¹⁸

Timken Notice

In *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s judgment sustaining the Final

¹³ *Id.*, at 1384.

¹⁴ *Id.*, at 1385-88.

¹⁵ *Id.*, at 1388-90.

¹⁶ See Final Remand Redetermination at 5.

¹⁷ *Id.*

¹⁸ *Id.*, at 6.

Remand Redetermination constitutes a final decision of the Court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by the producers and/or exporters listed below at the rates listed below.

Amended Final Results

Because there is now a final court decision, the Department is amending the *Final Results* with respect to Dongbu and Union Steel, plaintiffs in this case. The revised weighted-average dumping margins for these producers/exporters during the period August 1, 2011, through February 14, 2012, are as follows:

Weighted-Average Dumping Margins:

Producer/Exporter	Weighted-Average Dumping Margin (percent)
Dongbu	5.38
Union Steel	5.38

Cash Deposit Requirements

The Department notified CBP to discontinue the collection of cash deposits on entries of the subject merchandise, entered or withdrawn from warehouse, on or after February 14, 2012.¹⁹ Therefore, no cash deposit requirements will be imposed in response to these amended final results.

¹⁹ See *CORE Revocation*, 78 FR at 16833.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: September 10, 2015.

Paul Piquado,
Assistant Secretary
for Enforcement and Compliance.

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